12.

SUPREME COURT OF THE UNITED STATES.

No. 22.

LESSEE OF CHARLES SCOTT, ET AL. PLFF. IN ER.

vs.

THOMAS REID, JR. ET AL.

ERROR TO CIRCUIT COURT UNITED STATES, WEST TENNESSEE.

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said prayers, refusals, instructions and exceptions, and thereupon the said judge did, at the request aforesaid, put his seal to this bill of exceptions, and the same is ordered to be taken and annexed to the record of the said suit.

[SEAL.] H. POTTER,
District Judge United States for District N. Carolina.

Know all men by these presents, that we, John Brown and Thomas P. Devereux, are held and firmly bound unto David Underwood in the full and just sum of five hundred dollars, to be paid to the said David, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents, sealed with our seals, and dated this fifteenth day of December in the year of our Lord one thousand eight hundred and thirty five.

Whereas, lately at a circuit court of the United States for the district of North Carolina, in a suit depending in said court between John Doe on demise of Margaret Latimer and others, plaintiff, against said David Underwood, judgment was rendered against the said lessors, and the said plaintiff having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said David Underwood citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of January next. Now the condition of the above obligation is such, that if the said plaintiff shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else remain in full force and virtue.

JOHN BROWN. [SEAL.]
T. P. DEVEREUX. [SEAL.]

Approved by
H. POTTER, *Dist. Judge U. S. Dist. N. Carolina.*

UNITED STATES OF AMERICA, *North Carolina District.*
Circuit Court, Fifth Circuit.

I, William H. Haywood, clerk of the circuit court of the United States for the district aforesaid, do hereby certify the foregoing to be a copy of the proceedings in the ejectment filed in this court by Margaret Latimer and others against David Underwood.

[L. S.] Given under my hand and seal at office this 18th day of December, A. D. 1835.

WM. H. HAYWOOD, *Clerk.*

Service of citation and every other matter necessary to the filing of this record are admitted, and it is agreed to be filed.

G. E. BADGER, *for Defendant in Error.*

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Langtree & O'Sullivan, Print.

At a Circuit Court of the United States, begun and held at Nashville, in and for the district of West Tennessee, on the first Monday, being the fourth day of September, in the year 1837, and in the 62d year of our Independence. Present the Honorable John Catron, one of the associate justices of the Supreme Court of the United States, and the Honorable Morgan W. Brown, Judge of the courts of the United States for the districts of East and West Tennessee.

JOHN DEN, Lessee of Charles C. Scott et al., Plaintiff,
against
THOMAS REED, JR. et al., Defendants. } Ejectment.

Thomas Reid, Jr., James Hanna, Joseph Hanna, Thomas F. Butler, William Collins, Willie I. Burrus, and Wesley Howard, citizens of the State of Tennessee, were attached, by writ of capias ad respondendum, issued 1st April, 1831, to answer John Den, who is a citizen of the State of Virginia, and lessee of Charles Christopher Scott, Edward W. Clark, James Hendricks, and Elizabeth his wife, Jesse Joplin, and Susan, his wife, and Mary Clark; Samuel Griffin, William S. Griffin, Charlotte Griffin, John H. Griffin, and Mitchell; Elizabeth Preston, Margaret Preston, and Doshia Preston, Bowker Preston; Richard Hobson, and Louisa, his wife, Richard S. West, Jordan A. West, John H. West, Margaret Eliza West, and Smithson H. West, who are citizens of the said State of Virginia, of a plea of trespass, wherefore they broke and entered the close of him, the said John Den, and ejected and drove him therefrom, to his damage, one thousand dollars.

And thereupon the plaintiff, by his attorney, filed his declaration, which is as follows, to wit:

SEVENTH CIRCUIT OF THE UNITED STATES,
District of West Tennessee, ss.

John Den, who is a citizen of the State of Virginia, by attorney, complains of Richard Fen, who is a citizen of the State of Tennessee, in custody, &c., in a plea of trespass, &c. For that Charles Christopher Scott, Edward W. Clark, James Hendricks and Elizabeth, his wife, Jesse Joplin, and Susan, his wife, and Mary Clark; Samuel Griffin, William S. Griffin, Charlotte Griffin, John H. Griffin, and Mitchell; Elizabeth Preston, Margaret Preston, and Doshia Preston, Bowker Preston; Richard Hobson, and Louisa, his wife, Richard S. West, Jordan A. West, John H. West, Margaret Eliza West, and Smithson H. West, who are citizens of the said State of Virginia, on the first day of October, 1830, at the district aforesaid, severally demised, and to farm, let unto the said John Den,

divers messuages, and a certain tract of land containing five thousand acres, lying in the district aforesaid, and bounded as follows, to wit: Situated in the middle district, on the west side of Richland Creek, of Elk River, and about one mile and three-quarters from the same; beginning at a black walnut, Thomas Polk's southwest corner, and runs west two hundred and twenty chains along or near the southern boundary of the State of Tennessee, to a honey-locust; then north, two hundred and twenty seven chains, thirty links, to a black oak; then east, two hundred and twenty chains, to an ash and honey-locust, said Thomas Polk's N. west corner (said Polk's land including both sides of Richland Creek;) then south, with said Polk's line, two hundred and twenty-seven chains, thirty links, to the beginning; being the land included in Grant No 152, issued by the State of N. Carolina to Stockley Danelson, on the 7th of April, 1790, with the appurtenances thereto belonging: to have and to hold the said messuages and tract or parcel of land, with the appurtenances, unto the said John Den and his assigns, from the first day of October, in the year aforesaid, for the term of twenty years, from thence next ensuing, and fully to be complete and ended. By virtue of which demises, said John Den entered into said tenements with the appurtenances, and was thereof possessed, until Richard Fen, afterwards, on the tenth day of October, in the year aforesaid, with force and arms, &c., entered into said demised premises, in and upon the possession of the said John Den, and ejected, drove out, and amoved the said John Den from his said farm, his term aforesaid not being yet ended, and still keeps out the said John Den, so amoved, and the said Richard Fen then and there other wrongs and enormities to the said John Den did, against the peace of the United States, and to the damage of the said John Den, one thousand dollars; and therefore he brings suit; and there are pledges to prosecute, &c.

THOS. WASHINGTON,
Att'y for Pl'ffs.

Messrs. Thomas Reid, Jr., Thomas Butler, William Collins, Willie I. Burrus, Joseph Hanna, James Hanna, and Wesley Howard, citizens of the State of Tennessee:

I am informed that you are in possession of, or claim title to, the demised premises in the above declaration mentioned, or some part thereof; and I, being sued in this action as casual ejector, and having no claim or title to the same, do advise you to appear before the circuit court of the U. States in the seventh circuit, in the district of West Tennessee, at Nashville, on the first day in June next, personally, or by some attorney of that court, and then and there, by a rule to be made of the same court, to cause yourselves to be made defendants in my stead; or I shall suffer judgment to be entered against me, and you will be turned out of possession.

Y'rs, &c.

RICH'D FEN.

And thereupon, at June Term, 1831, the defendants, by their attorney, came and confess lease, entry, and ouster, defend the wrong and injury, &c.; and for plea say, they are not guilty, in manner and form as the plaintiff in declaring hath alleged. And of this they put themselves upon the country.

YERGER & FOGG,
For Defendants.

And the plaintiff doth the like.

WASHINGTON,
Att'y for Pl'ff.

And thereupon said cause was continued from term to term, in said court, until the September thereof, in the year 1837, first aforesaid.

TUESDAY, 12th September, 1837.

The parties, by their attornies, appear; and it is stated to the court, that at the June Term, 1831, of the court, the said defendants came into court, and upon admitting lease, entry, and ouster, pleading not guilty, and agreeing to rely upon the title only, were admitted defendants, in the room and stead of the casual ejector; but there being no record thereof, and the said parties defendants now putting in the plea of not guilty, they are, *nunc pro tunc*, admitted defendants, upon the terms and conditions aforesaid.

And thereupon came a jury of good and lawful men, to wit: Micajah G. Lewis, Robert Bradford, Randai M. Ewing, John J. Whitaker, Calvin H. Nicholson, Elijah Boddie, Levi Wade, Robert P. Currin, Francis McGavock, Philip Shute, Joseph Knowles, and Jacob McGavock; who being elected, tried, and sworn, the truth to speak upon the issue joined, by consent of the parties, are permitted to disperse, and meet again at the meeting of the court on to-morrow, to proceed with the trial of this cause.

Before the jury was sworn in this cause, Francis B. Fogg, Esq. moved the court for leave to enter a suggestion, that he has been employed by James Connor to defend this cause; who, being a citizen of North Carolina, and not being a citizen of Tennessee, cannot be made a defendant. To the entry of which suggestion, the plaintiffs by their counsel objected, inasmuch as the said James Connor is no party to the cause, and cannot be made one. The court gave leave to enter the suggestion, but without determining its effect.

WEDNESDAY, 13th September, 1837.

The parties, by their attornies, again appear; and the jury heretofore sworn, having returned into court, and resumed the consideration of this cause, by consent of the parties, are again permitted to disperse, and meet again at the meeting of the court on to-morrow, to proceed with the trial of this cause.

THURSDAY, 14th September, 1837.

The parties, by their attornies, again appear; and the jury heretofore sworn, having returned into court, and resumed the consideration of this cause, are permitted to disperse, to meet again at the meeting of the court on to-morrow, to proceed with the trial thereof.

FRIDAY, 15th September, 1837.

The parties, by their attornies, again appear; and the jury heretofore sworn, having returned into court, and resumed the consideration of this cause, by consent of the parties, are permitted to disperse, to return into court at the meeting thereof on to-morrow, to proceed with this trial.

SATURDAY, 16th September, 1837.

The parties, by their attornies, again appear; and the jury heretofore sworn, having returned into court and resumed the consideration of this cause, by consent of the parties, are permitted to disperse, and meet again at the meeting of the court on Monday next, to proceed with the trial of this cause.

MONDAY, 18th September, 1837.

The parties, by their attorneys, again appear; and the jury heretofore sworn, having returned into court, and resumed the consideration of this cause, on their oaths do say, that the defendants are guilty of the trespass and ejectment in the declaration mentioned, in manner and form as the plaintiff in declaring hath alleged, as to the interest or portion of Charles C. Scott, being one-sixth of one-fourth of the whole five-thousand-acre tract; as to Susan Joplin's interest being one-sixth of one-fourth of the whole; as to Mary Clark's interest being one-sixth of one-fourth of the whole; as to William S. Griffin's interest being one-fifth of one-fourth of the whole; as to Charlotte Griffin's interest being one-fifth of one-fourth of the whole; as to Margaret Preston's interest being one-fourth of the one-twentieth of the whole; as to Doshia Preston's interest being one-fourth of the twentieth of the whole; as to the interest of Louisa Hobson, Richard S. West, Jordan A. West, John H. West, Margaret E. West, and Smithson H. West, being entitled each to one-sixth of one-fourth of the whole premises. And as to the residue of the premises, in the declaration mentioned, they say that the defendants are not guilty, as in pleading they have alleged. And they assess the plaintiffs' damages, by reason of the premises, to one cent.

TUESDAY, 19th September, 1837.

The parties, by their attorneys, again appear; and it is thereupon considered by the court, that the plaintiff recover of the defendant's

his term, yet to come, of an in the several parts or portions of the land in the declaration mentioned, with the appurtenances, as to which the defendants were found guilty, by the verdict of the jury; and that he have his writ of possession, to be admitted a tenant in common with the defendants of said premises, to the extent of an undivided moiety of the whole five thousand acres. It is further considered by the court, that the plaintiff recover of the defendants his damages, by the jury so assessed, and his costs in this behalf expended, and that he have his execution.

FRIDAY, 29th September, 1837.

The parties, by their attorneys, again appear, and the defendants except to the opinion of the court, delivered in the progress of the trial of this cause, and tender their bill of exceptions, which is signed and sealed by the court, and ordered to be made a part of the record.

Defendants' Bill of Exceptions.

Be it remembered, that in the trial of this cause, the lessors of the plaintiff read in evidence a deed executed by Stockley Danelson to John Hook, which, with its probates and registrations, is as follows, to wit:

This indenture, made this 24th day of March, one thousand seven hundred and ninety-one, between Stockley Donelson, of Hawkins county, of the territory of the United States of America south of the river Ohio, late of the State of North Carolina, of the one part, and John Hook, of Franklin county and State of Virginia, of the other part, witnesseth: That the said Stockley Danelson, for and in consideration of the sum of six hundred and twenty-five pounds, current money of Virginia, to him in hand paid, the receipt whereof, he, the said Stockley Donelson, do hereby acknowledge, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said John Hook, his heirs, executors, administrators or assigns; forever, a tract of land, lying and being in the territory of the United States of America south of the river Ohio, late of the State of North Carolina, in the middle district of the Western territory, on the west side of Richland creek, of Elk river, about one mile and three-quarters from said Elk river; beginning at a black walnut, Thomas Polk's southwest corner, and runs west two hundred and twenty chains, along or near the southern boundary of said State, to a honey-locust; thence north two hundred and twenty-seven chains, thirty links, to a black oak; thence east two hundred and twenty chains, to an ash and honey-locust, said Thomas Polk's northwest corner, (said Polk's land including both sides Richland creek;) thence south, with said Polk's line, two hundred and twenty-seven chains thirty links, to the beginning: together with all the privileges and appurtenances thereunto belonging, or in any ways appertaining; to have and to hold the aforesaid tract of land, together with all the appurtenances, unto him, the said John Hook, his heirs and assigns, forever. He, the

said Stockley Danelson, by these presents, will warrant and forever defend the said granted land and premises, free from the just claim or demand of all persons whomsoever. In witness whereof, the said Stockley Donelson hath hereunto set his hand and seal, date above written.

STOCKLEY DANELSON, [L. S.]

Signed, sealed and delivered in presence of

PHILEMON SMITH,
JAMES WRAY,
JOHN HALE,
HIS
DAVID ⋉ MORGAN.
MARK.

Memo.—That on the 24th day of March, one thousand seven hundred and ninety-one, quiet and peaceable possession of the within mentioned land and premises, was held by the within named Stockley Donelson, and by him delivered to the within named John Hook, according to the usual form of livery and seizin, and according to the true force and effect of the within deed.

STOCKLEY DANELSON, [L. S.]

Signed, sealed and delivered, in presence of

PHILEMON SMITH,
JAMES WRAY,
JOHN HALE,
HIS
DAVID ⋉ MORGAN.
MARK.

This day, before me, David Campbell, one of the judges for the State of Tennessee, came Stockley Danelson, and acknowledged, in due form of law, the execution of the within instrument of writing to be his act and deed. March 28th, 1799. Let it be registered.

DAVID CAMPBELL.

Hailsford, Franklin county, Virginia, May 10th, 1798. Stockley Danelson, now a citizen of Raleigh, North Carolina, again acknowledged the within deed, also the memorandum on the back thereof, to be his act and deed. In testimony whereof, we, the witnesses, attest.

Witnesses, to wit:

CHARLES SIMMONS,
JOB MEADOR,
JAMES GREER,
WILLIAM SMITH,
BOWKER PRESTON,
JOHN MEADOR,
WILLIAM DRAKE,
ROBERT CHILDERS.

At a court held for Franklin county, in July, 1798, the written indenture, together with the memorandum of livery and seizin, was proved by the oaths of the last subscribed witnesses to be the respective acts and deeds of Stockley Danelson, and the same were admitted to record, and ordered to be certified.

Teste: JAMES CALLOWAY, *Clerk.*

VIRGINIA—*to wit:*

I, Thomas Hale, presiding magistrate of the county of Franklin, do hereby certify, that James Calloway, who attests the above record, is clerk of the said county, and that due faith and credit is, and ought to be, given to his signature, throughout the United States of America, and wheresoever these presents shall go. Given under my hand, this 7th day of August, 1798.

THOS. HALE.

STATE OF TENNESSEE—*Davidson County, Register's Office:*

The annexed deed of conveyance and probate, taken by David Campbell, Esquire, is duly registered in book D., page 61. April 16th, 1799.

THOMAS MOLLOY, *Reg'r.*

STATE OF TENNESSEE—*Giles County, Register's Office:*

The within or foregoing deed of conveyance, memorandum, certificate of acknowledgment before David Campbell, judge, and certificate of registration in Davidson county, Tennessee, which deed is from Stockley Danelson to John Hook, for five thousand acres of land, are all duly registered in this office, in book M., and pages 140 and 141, this 8th day of August, 1836.

DAN'L McCORMACK, *Register.*

And proved that John Hook was dead, and that the lessors of the plaintiff were his devisees, and the heirs at law of his devisees. The defendants also read in evidence a deed from the said Stockley Danelson to James Connor, for the same land; which is as follows:

This indenture, made this eighth day of December, in the year of our Lord one thousand seven hundred and ninety-seven, between Stockley Danelson, of the county of Wake, and State of North Carolina, of the one part, and James Connor, of the county of Mecklenburg, and State aforesaid, of the other part, witnesseth: That for and in consideration of the sum of one thousand pounds, current money of the State aforesaid, to me in hand paid, the receipt whereof is hereby acknowledged, hath bargained, sold, and by these presents doth bargain, sell, enfeoff and convey, unto the said James Connor, his heirs, ex'rs and assigns, forever, a certain tract or parcel of land, containing five thousand acres, be the same more or less, lying upon the waters of Elk river, on the west side of Richland

creek, in the middle district, in the State of Tennessee; beginning about one mile and three-quarters from the same, at a black walnut, Thomas Polk's southwest corner, and runs west two hundred and twenty chains, along or near the southern boundary of said State, to a honey-locust; thence north, two hundred and twenty-seven chains and thirty links, to a black oak; thence east, two hundred and twenty chains, to an ash and honey-locust, said Thomas Polk's northwest corner, said Polk's land including both sides Richland; thence south, with said Polk's line, two hundred and twenty-seven chains thirty links, to the beginning; together with all waters, water-courses, profits, hereditaments, and appurtenances thereunto or in any wise belonging, to the only proper use and behoof of him, the said James Connor, his heirs, executors, administrators and assigns, forever. And I, the said Stockley Danelson, for myself, my heirs, administrators and assigns, doth warrant, and forever defend, the above premises of five thousand acres of land, lying and situate as above, to the said James Connor, his heirs and assigns, from the lawful claim of any person or persons whatsoever, agreeable to the laws of North Carolina.

In witness whereof, the said Stockley Donelson hath hereunto set his hand, and affixed his seal, the day and year above written.

STOCKLEY DANELSON, [SEAL.]

MATT. BRANDON,
RED'D D. BARRY.

NORTH CAROLINA—*Rowan County, August 23d,* 1809:

Then the due and fair execution of the within deed was duly proved before me, Francis Locke, one of the judges of the superior courts of law and courts of equity, for the State aforesaid, by the oath of Matthew Brandon, a subscribing witness thereto. Let it be registered.

FRAN'S LOCKE, *J. S. C. G. & E.*

STATE OF TENNESSEE—*Giles County, Register's Office:*

I, Fountain Lester, Register of said county, do hereby certify that the within deed and certificate are duly registered in my office, in book C, pages 96 and 97.

Given under my hand, this 3d day of June, 1817.

FOUNTAIN LESTER, *Reg'r.*

STATE OF TENNESSEE—*Davidson County, ss.*

Personally appeared before me, Smith Criddle, Clerk of the county court of said county, Robert Weakley, who, being first sworn, deposes and says, that he was personally acquainted with Stockley Danelson, the bargainor, and well acquainted with his signature, having frequently seen him write; and that he verily believes the signature to the within deed, purporting to be his, is his genuine signa-

ture. He also deposes and says, that he was acquainted with Matthew Brandon and Redmond D. Barry, subscribing witnesses to the within deed, and acquainted with their hand-writing, having often seen them write, and that he verily believes the signatures purporting to be theirs are their genuine signatures, and that all three of them are dead.

Witness my hand, at office, this 9th day of August, A. D. 1836.

SMITH CRIDDLE.

STATE OF TENNESSEE—*Davidson County, ss.*

Personally appeared before me, Smith Criddle, clerk of the county court of said county, Thomas Crutcher, who, being first sworn, deposes and says, that he was personally acquainted with Stockley Danelson, the bargainor, and well acquainted with his signature, having frequently seen him write, and that he verily believes the signature to the within deed, purporting to be his, is his genuine signature, and that he is dead. He also deposes and says, that he was acquainted with Redmond D. Barry, one of the subscribing witnesses to the within deed, and acquainted with his hand-writing, having often seen him write, and that he has some of his writing now in his possession; and that he verily believes the signature within, purporting to be his, is his genuine signature, and that he is dead.

Witness my hand, at office, this 10th day of August, A. D. 1836.

SMITH CRIDDLE.

STATE OF TENNESSEE—*Giles County, Register's Office.*

The within deed of conveyance, with the several probates, are duly registered in this office, in book M, and pages 149, 150 & 151, this 22d day of August, A. D. 1836.

DANIEL McCORMACK, *Register.*

The defendants had been more than seven years from the commencement of this suit, in possession of the land, and claimed to hold the land by virtue of the act of limitations. They read in evidence, to cover their possession, several deeds from Henry W. M. Connor, as attorney in fact of James Connor, being the same deeds referred to and copied in the bill of exceptions of the plaintiff, to which reference is had; and they insisted that by virtue of the execution of the deed of Donelson to said Connor, the legal and better title to all the land, was in James Connor, or those claiming under him. That said Connor was a subsequent purchaser, without notice of Hook's prior deed, and that, as to him, said deed was void, and of no validity; and that no subsequent probate or registration could make it so. They also insisted that said deed was not legally proved and registered, so far as regards Connor, who was a subsequent purchaser from Danelson; and they requested the court to instruct the jury that the better legal title was in Connor, or those claiming under him; but the court refused so to charge, but charged as follows:

"The land in controversy was granted by North Carolina to Stockley Donelson, in 1788; in 1791, he conveyed the same to Hook. This deed was registered in Davidson county, Tennessee, in 1799, the land then being within the Indian boundary. There was no authority for registering in Davidson, nor any county in Tennessee, until the lands were ceded by the Chickasaws, in July, 1805. The registry in Davidson was confirmed however, by the act of 1821, ch. 61. And by the act of 1824, ch. 12, deeds registered in a county where the lands did not lie, might be registered in the proper county. On the 8th of August, 1836, Hook's deed was again registered in Giles, pursuant to this act. The defendants claim under James Connor, who obtained a deed from Stockley Donelson, in 1799, for the same land. This deed was first lawfully registered on the 22d day of August, 1836; and although the younger deed and last registered, it is contended for defendants, it is superior to the deed to Hook, because Connor was an innocent purchaser for valuable consideration, without notice of Hook's previous purchase; and that such is the effect of Connor's deed, both by the general principles of law, and in virtue of the provisos to the acts of 1821 and 1824, under which Hook's deed was registered. By the act of 1715, ch. 38, no conveyance for land is available in laws, until registered. This is a substitute for livery of seizure, and actual possession, and until registration takes place, the legal title rests with the grantor. He may sue the grantee for the land, if the latter be in possession, and turn him off; and he is not permitted to produce and read his unregistered deed in the action of ejectment. Upon general principles, he who has the older equity, or is first in time, has the better right; but if the second purchaser acquired his equity without notice of the first, no relief can be given against him; and if he draws to his conveyance the older legal title, by first registering his deed, no legislative act can take from him such legal title, and vest it in another, by authorizing a deed of older date to be registered, thereby to overreach the first registration, and vestiture of legal title. As to the provisos to the acts of 1821 and 1824, the first declares, 'that no person claiming by a conveyance under the same title, shall be affected thereby.' What description of conveyance must the person claim by virtue of, who is not to be affected? The act has reference to conveyances, so far as we dare notice it on this occasion, of a character that can be used as evidence of title in the present action of ejectment. Until registered, Connor's deed could not be known to us; but when registered, then it was made the duty of the court to take cognizance of, and protect it, and see that Hook did not by a subsequent registration of his elder deed, by virtue of the act, defeat Connor's prior legal estate. And the same principle applies to the act of 1824. It declares, 'that nothing in the act contained shall be so construed, as to affect the right of any subsequent purchaser claiming under the same title.' Now, what description of subsequent purchaser can this court notice? Of course, one producing a registered title, and showing a vested legal estate, elder and better than the one communicated by virtue of the registry made under the act. We are dealing with legal rights, known to the action of ejectment.

If Connor had had the better right when Hook's deed was registered in 1836, by virtue of a previous registration in the proper ocunty, then the act of 1824 could not affect such title, and overreach it with Hook's, subsequently registered. But from the face of the deeds, Hook had the elder equity, and by registry of his deed, he drew to it the perfect legal title before Connor acquired any. And therefore, Hook's title is the elder and better. Had Connor's deed been the eldest, then the question made by him, would have been presented, and Hook's deed been adjudged the better, though of younger date. And such is the effect given to deeds, as between two grantees, from the same grantor, by the 6th section of the register act of 1831; in virtue of which act Connor's deed was first proved and registered. It is also insisted for plff. that the registration of 8th August, 1836, in Giles, of Hook's deed, was warranted by the acknowledgment endorsed upon it, made before Judge Campbell, in 1779, independent of the provisos of the act of 1824, ch. 12, and that by force of the act of 1831, Hook had the superior title. On this point we give no instruction, farther than to say, that the two registrations in Davidson & Giles, were effectual to communicate the better legal title to Hook."

To which opinion of the court, the defendants, by their counsel except and pray that this bill of exceptions may be signed, sealed, and ordered to be made a part of the record, which is done accordingly.

J. CATRON, [SEAL.]
M. W. BROWN, [SEAL.]

SATURDAY, September 30th, 1837.

The parties, by their attorneys, again appear, and thereupon the plaintiff excepts to the opinion of the court, delivered during the progress of the trial of this cause, and tenders his bill of exceptions, which is signed and sealed by the court, and ordered to be made a part of the record.

Plaintiff's Bill of Exceptions.

Be it remembered, that this cause came on for trial, in the circuit court of the United States, for the district of West Tennessee, on the 12th day of September, 1837, before the honorable John Catron and Morgan W. Brown, judges, and a jury; upon the trial of which, the defendants, in the derivation of title to themselves, to the land in controversy, offered to read as evidence, a deed from Stockley Danelson to James Connor, with two certificates of probate, and two certificates of registration endorsed thereon; which deed and certificates are as follows: (see this deed and certificates, in defendants bill of exceptions.) To the reading of which deed as evidence to the jury, the plaintiff objected. The court decided that the said deed could not be read in virtue of the first certificate of probate, and the registration founded thereon; but that it could be read in virtue of the second certificate of probate, and the registration founded thereon.

To this decision of the court, so far as the same relates to the second certificate of probate, and the registration founded thereon, the plaintiff excepts, and tenders this his bill of exceptions. The defendants next offered to read as evidence, a power of attorney, from James Connor to Henry W. M. Connor, by virtue of the probate thereto attached, and the two certificates of registration founded thereon; which power of attorney, certificate of probate, and certificates of registration, are as follows:

"STATE OF NORTH CAROLINA:

Know all men by these presents, that I, James Connor, of the county of Mecklenburg, & state aforesaid, for divers good causes and considerations me hereunto moving: have made, ordained, authorized, nominated and appointed, and by these presents do make, ordain, authorize, nominate and appoint, Henry W. M. Conner, my true and lawful attorney, for me, and in my name and stead, and for my own proper benefit, to transact, manage and settle, all manner of business or things relating to, or concering the matters hereinafter named, viz: a tract of land on the Tennessee river, in Marion county, and state of Tennessee; also a tract of land on the Obion river in said state; also, a tract of land on the Forked Deer river, in said state; also, a tract of land on Richland creek, in Giles county, in said state; and in a word, all and every tract or tracts of land to me belonging, or by me claimed, in the state of Tennessee; giving and granting unto my said attorney, my full and whole power, strength and authority, in and over the said lands and premises, with the appurtenances. To lease or to rent, to contract, and bargains to make and confirm, of purchase and of sale, as may seem expedient and proper; suits in law or equity, to institute or defend, prosecute, compromise and conclude, for me and in my name, as may appear to my said attorney, to be requisite and proper; and upon the making any contract or contracts, or doing any act concerning the premises, obligations, bonds, deeds of sale, or other instruments of writing, for me, and in my name, to make, seal and deliver. Likewise, to ask, demand, sue for, recover, and receive, all such sum or sums of money, debts and demands whatsover, as are, or may become due and owing to me, the said James Connor, by and from any person or persons in the State of Tennessee; and to have, use and take, all lawful ways and means for the recovery thereof, and acquittances, or other sufficient discharges for the same, to make, seal and deliver; and all and every other act or acts, thing or things, device and devices, in the law, whatsoever, needful to be done, in and about the premises, for me, and in my name, to do, execute and perform as fully and amply, to all intents and purposes, as I myself could do, if I was personally present; or as if the matter required more special authority than is herein before given. Ratifying and confirming, and by these presents allowing, whatsoever my said attorney shall, in my name, lawfully do, or cause to be done, in and about the premises, by virtue of these presents. And further, know all men by these presents, that whereas

I, James Conner, as aforesaid, in and by my letter of attorney, bearing date the 10th day of April, 1819, did make, constitute and appoint Charles D. Conner, of Iredell county, No. Carolina, my attorney for such purposes as by said letter of attorney may appear. Now, know ye, that I, the said James Conner, for divers good causes and considerations me hereunto moving, have revoked, countermanded, annulled and made void, and by these presents do revoke, countermand, annul and make void, the said letter of attorney, and all power and authority thereby given, or intended to be given to the said Charles D. Conner.

In witness whereof, I have hereunto set my hand and seal, the seventh day of May, in the year of our Lord one thousand eight hundred and twenty-two.

JAS. CONNOR, [SEAL.]

STATE OF NORTH CAROLINA, MECKLENBURG COUNTY.

It is hereby certified, that the within letter and power of attorney, and the above revocation was duly acknowledged in open court, by James Conner, who excuted the same, and delivered it for the purposes therein expressed.

In witness whereof, I, George Graham, clerk of the superior court of law, for the county of Mecklenburg, and [L. S.] state aforesaid, have hereunto set my hand, and affixed the seal of my office, the 7th day of May, A. Dom. 1823, and in the 4th of the independence of the state.

GEO. GRAHAM,
Clerk Supr. Ct. Law.

MECKLENBURG COUNTY, NORTH CAROLINA:

I, Joseph John Daniel, one of the judges of the superior court of law, for the county and state aforesaid, do certify, that George Graham, whose signature appears to the above certificate, is, and then was, clerk of the said superior court of law, for the state and county aforesaid, and that his attestation is in due form. And as such, all faith and credit is due to his official acts.

Witness my hand and seal, 7th day of May, A. Dom. 1823.

J. J. DANIEL, [SEAL.]

STATE OF TENNESSEE—*Giles County, Register's Office.*

The within power of attorney and certificates are duly registered in this office, in book M, pages 159, 160 & 161, this, the 31st day of August, 1836.

DANIEL McCORMACK, *Register.*

STATE OF TENNESSEE—*Giles County, Register's Office.*

The within power of attorney and certificates are duly registered

in this office, in book N, pages 24 & 25, this, the 31st day of July, 1837.

DANIEL McCORMACK, *Register.*

To the reading of which power of attorney as evidence to the jury in this cause, the plaintiffs by their counsel objected. The court decided that the probate of said power of attorney was sufficiently authenticated according to the laws of Tennessee, to entitle it to registration in the county of Giles, where the land in controversy is situated, and that it had been duly admitted to record in said county, and permitted it to be read to the jury. To the said decision of the court, the plaintiff excepts and tenders this, his bill of exceptions.

The defendants next offered to read, as evidence, five paper writings, which they called deeds from James Conner to different defendents, executed by his attorney, in fact, Henry W. M. Conner, for various portions of the land in controversey, to wit: one for four thousand five hundred acres made to Thomas Reid, Jr. and John Butler, bearing date on the first day of June, 1822, and registered on the 24th day of May, 1824; one to James Hanna for 200 acres, bearing date on the 29th day of May, 1822, and registered on the 9th day of September, 1825; one to James Hanna for 192 acres, bearing date on the 30th day of May, 1822, and registered on the 10th day of February, 1823; one to James Hanna for 80 acres, bearing date on 20th day of May, 1822, and registered on the 28th day of August, 1832; and one other to James Hanna for 22½ acres, bearing date on the 30th day of May, 1822, and registered on the 17th day of January, 1823, and which are as follows, to wit:

"This indenture, made this first day of June, in the year of our Lord one thousand eight hundred and thirty-two, between James Conner, of the county of Mecklenburg and state of North Carolina, of the one part, and Thomas Reid, Jr. and John Butler, of the county of Giles and state of Tennessee of the other part, witnesseth, that for and in consideration of the sum of two thousand five hundred dollars, in hand paid, the receipt whereof is hereby acknowledged; the said James Conner hath bargained, sold, set over, released, conveyed and confirmed; and by these presents doth bargain, sell, set over, release, convey and confirm to the said Thomas Reid, Jr. and John Butler, their heirs, &c. forever, a certain piece or parcel of land, lying in the county of Giles, upon Richland creek, being a part of a tract of land granted by the state of North Carolina, to Stokely Danelson, and by him conveyed to James Conner, by deed, dated 8th December, 1797; and containing by estimation, four thousand five hundred acres, be it more or less, and bounded as follows, viz: beginning at a black walnut, Thomas Polk's south west corner, and runs west 440 poles to a stake; thence N. 240 poles to a stake; thence W. 340 poles, running by a black walnut, Hanna's north east corner of survey, No. 1, to a stake, the south east corner of Hanna's survey, No. 2; thence with the east boundary of said survey, No. 2, north 320 poles to a gum, the north-east corner of survey, No. 2; thence west 96 poles to a stake, on the

west boundary line of said five-thousand-acre tract; thence north 350 poles to a black oak, the northwest corner of said large survey; thence east 880 poles to an ash and honey-locust, the northeast corner of said large survey; thence south 910 poles to the beginning; containing four thousand five hundred acres, be the same more or less. And I, the said James Conner, do by these presents, and for the consideration heretofore expressed, covenant and agree to, and with the said Thomas Reid, Jr. and John Butler, their heirs, executors, and administrators, to warrant and forever defend the land heretofore described, and within the aforesaid boundaries; not only against the claim of myself, my heirs, executors, and administrators, but against the claim or claims of all persons whatsoever. And for the true performance of which, I bind myself, my heirs, executors and administrators.

In witness whereof, I have hereunto, this, the day and year above, written my name, and affixed my seal in presence of

HENRY W. M. CONNER,
Agent and Attorney in fact.
For JAMES CONNER. [SEAL.]

Test: ROBERT L. COBBS.
JAMES HANNA.

STATE OF TENNESSEE—*Giles County Court, February Term*, 1834.

I, German Lester, clerk of the court of pleas, and quarter sessions, holden for the county aforesaid, do certify, that then, the written deed of conveyance from Henry W. M. Conner, agent and attorney in fact for James Conner, to Thomas Reid, Jr. and John Butler, was produced in court, and the execution thereof proven by the oaths of Robert L. Cobbs and James Hanna, (the witnesses thereto,) and ordered to be certified for registration.

In testimony whereof, I have hereunto set my hand and [L. S.] affixed the seal of said court, at office, in Pulaski, the 8th day of March, 1824.

G. LESTER, *Clerk.*

STATE OF TENNESSEE—*County Register's Office.*

The within deed of conveyance and certificate, are duly registered in this office, in book E, pages 520 and 521, this 24th May, 1824.

FOUNTAIN LESTER.

This indenture, made this 29th day of May, in the year of our Lord one thousand eight hundred and twenty-two, between James Conner, of the county of Mecklenburg and state of North Carolina, of the one part, and James Hanna of the county of Giles and state of Tennes-

see, of the other part, witnesseth, that the said James Conner, for and in consideration of the sum of eight hundred and fifty dollars, in hand paid, the receipt whereof is hereby acknowledged, hath this day bargained, sold, set over and released; and by these presents doth bargain, sell, set over and release, unto the said James Hanna, a certain tract or parcel of land, containing two hundred acres, lying in the county of Giles, upon Buck creek; (being a part of a tract of five thousand acres, granted by the state of North Carolina, to Stokely Danaldson;) beginning at a standing rock marked I. H., and elm on the west of said five-thousand-acre tract, and runs east one hundred and eighty poles to a sweet gum; thence north, one hundred and eighty poles to a black walnut; thence west, one hundred and eighty poles, to an ash on said west line of said five-thousand-acre tract; thence south, with said line, to the beginning. The said tract of two hundred acres, with all ways, waters, mines and minerals, together with each and every appurtenance or appurtenances, thereto, in any way belonging or appertaining, the said James Connor, for himself, his heirs, executors, administrators and assigns, doth now sell, bargain, transfer, and convey to the proper use and benefit of said James Hanna, and his heirs forever. And to the said James Hanna, his heirs, executors and admrs., the said James Conner, for himself and his heirs, doth warrant and defend the said tract of land from the lawful claim or claims of any person or persons whatsover.

In witness whereof, I, Henry W. M. Conner, agent and attorney in fact for the said James Conner, have hereunto set my hand, and affixed my seal, the day and year above written.

HENRY W. M. CONNER. [L. S.]
Agent and Atto. in fact,
For JAMES CONNER.

Test: A. S. JONES,
ALFRED M. HARRIS.

STATE OF TENNESSEE—*Giles Couuty Court, May Term*, 1822.

Then was the within deed of conveyance from James Conner, by Henry W. M. Conner, agent and attorney in fact, to James Hanna produced in court, and the execution thereof acknowledged by the said Henry W. M. Conner, agent and attorney in fact for James Conner, and ordered to be certified for registration.

In testimony whereof, I, German Lester, clerk of said court, have hereunto set my hand, and affixed the seal of said court, at office, this 19th day of September, 1822.

GERMAN LESTER, *Clk.*

STATE OF TENNESSEE—*Giles County, Register's office.*

The within deed of conveyance and certificate, are duly registered in

this office, in book F, pages 329 and 330, this 9th day of September, 1825.

FAUNTAIN LESTER, *Reg'r.*

This indenture, made this thirtieth day of May, in the year of our Lord one thousand eight hundred and twenty-two, between James Connor, of the county of Mecklenburg, and State of North Carolina, of the one part, and James Hanna of the county of Giles, and State of Tennessee, of the other part, witnesseth, that for and in consideration of the sum of two hundred dollars in hand paid, the receipt whereof is hereby acknowledged, the said James Connor hath bargained, sold, conveyed and confirmed to the said James Hanna, his heirs and assigns forever, a certain tract of land, containing one hundred and ninety-two acres, lying in the county of Giles, and upon Buck creek; and being a part of a tract of five-thousand acres, granted by the State of North Carolina, to Stokely Donelson, and by him conveyed to James Connor, by deed, bearing date , 1797, and bounded as follows, to wit: beginning at an ash, the northwest corner of said Hanna's survey, No. 1, and runs with the west boundary of said five-thousand-acre survey, north, three hundred and twenty poles to a stake; thence east, ninety-six poles to a gum; thence south, three hundred and twenty poles to a stake, on the north boundary of said Hanna's survey, No. 1; thence west, with said line to the beginning; which tract of one hundred and ninety-two acres, to have and to hold to the own proper use and benefit of the said Hanna, his heirs, executors and admrs. the said James Connor, for himself, and his heirs, executors and admrs., doth warrant and defend, against the claim or claims, of any person or persons whatsoever.

In testimony whereof, I, Henry W. M. Connor, the legal agent and attorney in fact for the said James Conner, have hereunto set my hand and affixed my seal, the day and year first above written.

HENRY W. M. CONNER, [SEAL.]
Agent and Atto. in fact,
For JAMES CONNER.

Signed, sealed and delivered in presence of us,
HEZEKIAH JONES,
ELIJAH BOYD.

STATE OF TENNESSEE—*Giles County Court, November Term,* 1822.

Then was the within deed of conveyance from James Conner, to James Hanna produced in court, and the execution thereof proven by the oaths of Hezekiah Jones and Elijah Boyd, the subscribing witnesses thereto, and ordered to be certified for registration.

In testimony whereof, I, German Lester, clerk of said court, [L. S.] have hereunto set my hand, and affixed the seal of said court, at office, in the town of Pulaski, this 17th day of January, 1823.

GERMAN LESTER, *Clk.*

STATE OF TENNESSEE—*Giles County, Register's Office.*

The within deed of conveyance and certificate, are duly registered in this office, in book E, pages 248 and 249, this 10th day of February, 1823.

FOUNTAIN LESTER, *Regr.*

This indenture, made this thirtieth day of May, in the year of our Lord, one thousand eight hundred and thirty-two, between James Conner, of the county of Mecklenburg, and State of North Carolina, of the one part, and James Hanna, of the county of Giles, and State of Tennessee, of the other part, witnesseth, that for and in consideration of the sum of fifty-five dollars, in hand paid, the receipt whereof is hereby acknowledged, the said James Conner hath sold, bargained, conveyed and confirmed, to the said James Hanna, his heirs and assigns, forever, a certain tract or piece of land, containing by estimation, eighty acres, more or less; it being a part of a tract of land, granted by the State of North Carolina, to Stokely Danelson, and by him conveyed to James Conner, by deed, bearing date —, 1797, and bounded as follows, to wit: beginning at a beech on the east boundary of said Hanna's survey, No 1, and runs N. 70° east, two hundred and sixty poles to a black gum; thence N. 35° west, forty poles to a chesnut; thence south, 74° west, one hundred and twenty poles to a stake; thence south forty poles to a stake; thence south 80° west, one hundred and eight poles to a dogwood, on the east boundary line of survey No. 1; thence south forty poles to the beginning; which tract of eighty acres of land, with all the appurtenances thereunto belonging, the said James Connor doth, for himself and his heirs, and assigns, forever warrant and defend, to the own proper use and benefit of the said James Hanna, his heirs, executors and administrators, from the lawful claim or claims of all and every persons whatsoever.

In testimony whereof, I, Henry W. M. Connor, the agent and attorney in fact of James Connor, have hereunto set my hand and affixed my seal, the day and year first above written.

HENRY W. M. CONNER, [SEAL.]
Agent and Atto. in fact,
For JAMES CONNER.

Signed, sealed and delivered in presence of us,
WILLIAM FIELD,
THOMAS REID.

STATE OF TENNESSEE—*Giles County Court, August Term,* 1832.

Then was the within deed of conveyance from James Conner to James Hanna produced in court, and the execution thereof proven by the oaths of William H. Field, and Thomas Reid, the subscribing witnesses thereto, and was thereupon ordered to be recorded.

In testimony whereof, I, German Lester, clerk of said court, have hereunto set my hand at office, this 27th of August, 1832.

GERMAN LESTER,
Clerk.

STATE OF TENNESSEE—*Giles County, Register's Office.*

The within deed of conveyance and certificate, are duly registered in this office, in book J. page 277 and 278, this 28th August, 1832.

FOUNTAIN LESTER.
Register sd. County.

This indenture, made this thirtieth day of May, in the year of our Lord one thousand, eight hundred and thirty-two, between James Conner, of the county of Mecklenburg, and State of North Carolina, of the one part, and James Hanna, of the county of Giles, and State of Tennessee, of the other part, witnesseth. That for and in consideration of the sum of forty-five dollars in hand paid, the receipt whereof is hereby acknowledged, the said James Conner hath bargained, sold, set over, released and confirmed, and by these presents doth bargain, sell, set over, release and confirm, unto the said James Hanna, his heirs, executors and administrators forever, a certain tract or parcel of land, lying in Giles county, upon Buck creek, being a part of a five-thousand-acre tract, entered in the name of Stokely Donelson, and by him conveyed to the said James Conner, containing, by estimation, twenty-two acres and a half, to wit: Beginning at a standing rock, marked I. H. and an elm, the south-west corner of said Hanna's survey No. 1, and runs south sixty poles to a beech and white oak, the southwest corner of said five-thousand-survey, of Stokely Danelson's; thence east, with the southern boundary of said large tract, sixty poles to a box elder; thence N. 60 poles to a stake, on the south boundary of said Hanna's survey No. 1: thence west, to the beginning; which tract of twenty-two acres and-a-half, the said James Conner for himself and his heirs, doth agree forever to warrant and defend to the said James Hanna, his heirs, executors, and administrators, from the lawful claim or claims of any person or persons whatever.

In witness whereof, I have hereunto set my hand and affixed the day and year above written.

HENRY W. M. CONNER, [SEAL.]
Agent & Atto. in fact
For JAMES CONNER.

Signed, sealed and delivered, in presence of us.

HEZEKIAH JONES,
ELIJAH BOYD.

STATE OF TENNESSEE—*Giles County Court, November Term*, 1823.

Then was the within deed of conveyance from James Conner to James Hanna, produced in court, and the execution thereof proven, by the oath of Hezekiah Jones and Elijah Boyd, the subscribing witnesses thereto, and ordered to be certified for registration.

In testimony whereof, I, German Lester, clerk of said court, have hereunto set my hand, and affixed the seal [L. S.] of said court, at office in the town of Pulaski, this 17th day of January 1823.

GERMAN LESTER,
Clerk.

STATE OF TENNESSEE—*Giles County, Register's Office.*

The within deed of conveyance and certificate are duly registered in this office, in book E. pages 208 and 209, this 17th January 1823.

FOUNTAIN LESTER,
Clerk.

To the reading of each and all of said paper writings as evidence in this cause, the plaintiff objected, upon the ground that said paper writings, from their face, were not the deeds of James Connor, executed by his attorney in fact, nor the individual deeds of Henry W. M. Conner. The court decided, that said paper writings were admissible evidence, to give protection to the defendants, under the first or second sections of the act of limitations of Tennessee, of 1819, ch. 28, if possession had been holden under them for seven years. To this decision of the court, by which the said paper writings were read to the jury, the plaintiff excepts, and tenders this bill of exceptions. The plaintiff then, in order to lay a foundation for a further objection to the reading of said paper writings, proved by James M'Laughlin, that the said James Conner died in April 1835, and objected to the reading of said paper writings, upon the ground that they purported to have been executed by virtue of a power of attorney, at the dates which they respectively bear, which power of attorney had not been registered until 1836, and that said power of attorney, by the laws under which it was registered, could only operate from the date of its registration, and could not have the effect of creating antecedent deeds; and moreover, that the said James Conner being dead before the registration of said power of attorney, it was thereby revoked before it ever had any operation at all. The court overruled said objection; to which decision the plaintiff also excepts, and tenders this bill of exceptions. The plaintiff introduced evidence to show that the said power of attorney had been antedated, from the 7th of May 1823, to the 7th of May 1822, and insisted before the jury, that in the absence of said power of attorney, the execution of said paper writings called deeds, from James Conner, to the defendants, having

been no otherwise proved, than as mentioned in the said certificates of probate thereto attached, the said paper writings could not be considered as established for the purpose of giving protection to the defendants, under them, in virtue of the statute of limitations; but that to give them efficacy for such a purpose, their execution should have been proved according to the common law rules of evidence. The plaintiff also insisted, that said paper writings, to give protection under the statute of limitations to the defendants, as deeds purporting to convey an estate in fee simple, could only operate for that purpose, from the date of their registration. The plaintiff also insisted, that to give protection under the statue of limitations, to the possession of the defendants, as the possession of James Connor, would be giving to the deed held by him, a retrospective effect, destructive of the title of John Hook, when that deed, by the very act under which it was registered, is declared to take effect only from the date of its registration. The plaintiff also insisted, that the defendants could not be considered, so as to give them the benefit of the statute of limitations, as purchasers under James Connor, in contradistinction to grantees by deeds of conveyances duly executed, and as holding their possession in virtue of their purchase; because neither the said paper writings, nor the said deed to James Connor, had been any otherwise proved, than as deeds, and not according to the course of the common law.

The instruction of the court to the jury, so far as the plaintiff excepts to the same, was as follows: "We are of opinion, the five deeds read can be made available for the defendants, under the first or second sections of the act of limitations of 1819, upon one of these grounds, and it matters not which. First, as deeds purporting to convey a fee, under the first section; or second, as informal papers, furnishing evidence of the boundaries and extent of the possessions of the defendants under the 2nd section; or third, as furnishing evidence that the defendants held under James Connor's deed, and for him, whereby his deed of 1797 would be confirmed, and made superior to Hook's of 1791. This is the judgment of the court, upon the legal effect of the deeds, judging from their face. If you find, therefore, that the defendants have held and occupied the land, covered by the deeds, for more than seven years, commencing with their date, and continuing to the commencement of the suit, which is admitted to be the fact, then you will see who, and how many of the lessors of the plaintiff, are saved by the exceptions to the statute, because of infancy, coverture, &c. You will examine and decide whether or not the power of attorney from James Conner, to Henry W. M. Conner, was antedated, from 1823 to 1822, and if you find it was, then you will report the finding to the court, and we will further instruct you. As to the effect of the five deeds made by Henry W. M. Conner to the defendants, stripped of the protection of the power. But, if you ascertain the power was executed in 1822, as it now purports, then, you will find the defendants protected by the act of limitations, under the deeds, to the extent we have above instructed you." And the jury having

found, pursuant to the foregoing instructions, that the power of attorney from James Conner to Henry W. M. Conner, was antedated from the 7th day of May 1823, to the 7th day of May 1822, the court instructed the jury, "that the five deeds aforesaid, made by Henry W. M. Conner for James Conner, were still of a character to cover the possessions of the defendants, and that they were protected by the act of limitations, if they had held seven years possession before sued." To all of which, the plaintiff excepts, and tenders this his bill of exceptions, which he prays may be signed, sealed, and made a part of the record of this cause, which is accordingly done.

J. CATRON, [SEAL.]
M. W. BROWN, [SEAL.]

MONDAY, 2*nd October*, 1837.

The parties by their attorneys, again appear; and thereupon the plaintiff and the defendants, severally pray writs of error to the Supreme Court of the United States, to be held at the city of Washington, on the second Monday of January next, which, upon their giving bonds with surety, as required by law, are granted. And the parties severally acknowledge service of citations, requiring them to appear in said Supreme Court, and defend said writs of error.

Plainliffs' Bond for writ of error.

Know all by these presents that we, Charles C. Scott, James Hendricks, and Elizabeth, his wife, Jesse Joplin, and Susan, his wife, Mary Clark, Samuel Griffin, William S. Griffin, Charlotte Griffin, John H. Griffin, Mitchell, Elizabeth Preston, Margaret Preston, Doshia Preston, Bowker Preston, Richard S. West, Richard Hobson, and Louisa, his wife, Jordan A. West, John H. West, Margaret E. West, Smithson H. West, and Thomas Washington, and William Dickinson, are held and firmly bound unto Thomas Reid, Jr., Thomas Butler, William Collins, Willie Burrus, James Hanna, Joseph Hanna, and Wesley Howard, in the penal sum of five hundred dollars; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly, severally, and firmly by these presents. Signed with our names, and sealed with our seals, the 18th day of October, 1837.

The condition of this obligation is as follows: Whereas a certain action of ejectment was commenced and prosecuted in the circuit court of the United States for the district of West Tennessee; and such proceedings was therein had, that at the September term of said court in the year 1837, John Den, who was plaintiff in said action, as lessee of the said Charles C. Scott, James Hendricks, and Elizabeth, his wife, Jesse Joplin, and Susan, his wife, Mary Clark, Samuel Griffin, William S. Griffin, Charlotte Griffin, John H. Griffin, Mitchell, Elizabeth Preston, Margaret Preston, Doshia Preston, Bowker Preston, Richard S. West, Richard Hobson, and Louisa, his wife, Jordan A. West, John H. West, Margaret E. West, and

Smithson H. West, recovered against the said Thomas Reid, Jr., Thomas Butler, William Collins, Willie J. Burrus, Joseph Hanna, James Hanna, and Wesley Howard, who were defendants in said action, his unexpired term in one undivided moiety of the five thousand acres of land in the declaration mentioned, together with one cent damages, and his costs in that behalf expended. From which judgment of the court, the said John Den, lessee as aforesaid, prayed and obtained a writ of error to the Supreme Court of the United States, to be held at the City of Washington, on the second Monday of January next. Now, if the said John Den, lessee as aforesaid, shall prosecute said writ of error with effect, or in case of failure therein, shall well and truly pay and satisfy to the said Thomas Reid, Jr., Thomas Butler, William Collins, Willie J. Burrus, Joseph Hanna, James Hanna, and Wesley Howard, all such costs and charges as he may be adjudged, by the said Supreme Court, upon the trial of said cause to pay, then this obligation to be void; otherwise, to remain in full force and effect.

CH. C. SCOTT, *and others, the Plffs.* [SEAL.]
By THOS. WASHINGTON, [SEAL.]
THOS. WASHINGTON, [SEAL.]
WILLIAM DICKINSON, [SEAL.]

Defendant's Bond.

Know all men by these presents, that we, Thomas Reid, jr. Thomas Butler, William Collins, Willie J. Burrus, Joseph Hanna, James Hanna, Wesley Howard, George S. Yerger, and Francis B. Fogg, are held, and firmly bound unto John Den, lessee of Charles C. Scott, Edward W. Clark, James Hendricks, and Elizabeth, his wife, Jesse Joplin, and Susan his wife, Mary Clark, Samuel Griffin, William S. Griffin, Charlotte Griffin, John H. Griffin, Mitchell, Elizabeth Preston, Margaret Preston, Doshia Preston, Bowker Preston, Richard Hobson, and Louisa, his wife, Richard S. West, Jordan A. West, John H. West, Margaret E. West, and Smithson H. West, in the penal sum of five hundred dollars; for which payment well and truly to be made, we bind ourselves, our and each of *each of* our heirs, executors and administrators, jointly, severally, and firmly by these presents. Signed with our names, and sealed with our seals, the 18th day of October, 1837.

The condition of this obligation is as follows: whereas a certain action of ejectment was commenced and prosecuted in the circuit court of the United States, for the district of West Tennessee, and such proceedings were thereupon had, that at the September term of said court, in the year 1837, the said John Den, lessee as aforesaid, who was the plaintiff in said cause, recovered against the said Thomas Reid, jr., Thomas Butler, William Collins, Willie J. Burrus, Joseph Hanna, James Hanna, and Wesley Howard, who were defendants therein, his unexpired term, in one undivided moiety of the five thousand acres of land in the declaration mentioned, together with one cent damages, and his costs in that behalf expended. From

which judgment of the court the said defendants prayed and obtained a writ of error, to the Supreme Court of the United States, to be held at the city of Washington, on the second Monday of January next. Now, if the said Thomas Reid, jr., Thomas Butler, William Collins, Willie J. Burrus, Joseph Hanna, James Hanna, and Wesley Howard, shall prosecute said writ of error with effect, or in case of failure therein, shall well and truly pay and satisfy, to the said John Den, lessee aforesaid, all such costs and charges as they may be adjudged by the said Supreme Court, upon the trial of said cause to pay; then this obligation to be void; otherwise, to remain in full force and effect.

THOMAS REID, Jr.
By his Atts., GEO. S. YERGER, [SEAL.]
GEO. S. YERGER, [SEAL.]
F. B. FOGG. [SEAL.]

DISTRICT OF WEST TENNESSEE, *ss.*

I, Nathaniel A. M'Nairy, clerk of the circuit court of the United States, for the district of West Tennessee aforesaid, do certify, that the foregoing is a correct and faithful transcript of the record and proceedings had in said court, in the cause heretofore prosecuted and delivered therein, between John Den, lessee, of Charles C. Scott, and others, plaintiffs, and Thomas Reid, jr., and others, defendants, as the same remain of record in said court.

In testimony whereof, I hereto subscribe my name and affix the seal of said court, at office in Nashville, the 14th day of November, in the year 1837, and in the 62d year of the Independence of the United States.

[SEAL.]

N. A. M'NAIRY, *Clk. &c.*,
By P. HAY.

THE UNITED STATES, *ss.*

The President of the United States to the Judge of the Circuit Court of the United States, for the District of West Tennessee, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which in the said circuit court, before you or some of you, between John Den, lessee of Charles C. Scott, and others, plaintiffs, and Thomas Reid, jr., and others, defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday, of

January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness, the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and 37, and of the Independence of the United States, the 62d.

N. A. McNAIRY,
Clerk of the Circuit Court for the District of West Tennessee.
By P. HAY.

THE UNITED STATES, *ss.*

The President of the United States to the Judge of the Circuit Court of the United States, for the Disirict of West Tennessee, geeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which in the said circuit court, before you, or some of you, between John Den, lessee of Charles C. Scott, and others, plaintiff, and Thomas Reid, jr., and others, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid, being inspected by the said Supreme Court, may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness, the honorable Roger B. Taney, Chief Justice of the Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-seven, and of the Independence of the United States, the 62d.

N. A. McNAIRY,
Clerk of the Circuit Court for the District of West Tennessee.
By P. HAY.